

ARKANSAS SUPREME COURT

No. CR 06-107

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered May 4, 2006

TOMMY JOE CRAWFORD
Appellant

v.

STATE OF ARKANSAS
Appellee

PRO SE MOTION FOR
RECONSIDERATION OF DISMISSAL
OF APPEAL [APPEAL FROM THE
CIRCUIT COURT OF BENTON
COUNTY, CR 2001-351-2, HON.
DAVID S. CLINGER, JUDGE]

MOTION DENIED

PER CURIAM

Appellant Tommy Joe Crawford was found guilty by a jury of possession of drug paraphernalia with intent to manufacture methamphetamine and sentenced to forty years' imprisonment. We affirmed. *Crawford v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 12, 2005). The mandate of this court was issued on June 1, 2005.

On December 27, 2005, which was 209 days after the mandate was issued, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1 seeking to vacate or modify the judgment. The petition was dismissed as untimely, and appellant lodged an appeal from that order in this court. We dismissed the appeal on the ground that the petition was indeed untimely filed, which deprived the trial court of jurisdiction to consider it on the merits. *Crawford v. State*, CR 06-107 (Ark. April 6, 2006) (*per curiam*). Appellant now seeks reconsideration of the dismissal of the appeal.

Criminal Procedure Rule 37.2(c) provides in pertinent part that a petition for postconviction relief must be filed within sixty days of the date the mandate was issued following affirmance of the judgment of conviction. Appellant contends that both the circuit judge and the circuit clerk received a copy of his Rule 37.1 petition within the sixty-day period, but the circuit clerk or the circuit judge, or both, withheld the petition and it was not timely filed as a result. Appellant makes much of the bare claim that he was informed by the circuit clerk that the petition had been lost and that he submitted a replacement copy at the clerk's request, but he offers no substantiation to establish that the clerk in fact received a timely petition but failed to file it. He urges this court to consider the date the circuit judge received a copy of the petition, which was stamped by the judge's office as having been received on a date within the sixty-day period, as the filing date for the petition.

This court has specifically held that delivering a Rule 37.1 petition to a circuit judge is not the equivalent of filing the petition with the clerk for the purposes of determining whether the petition was timely filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (*per curiam*). Even if a circuit judge receives an item, he or she has no obligation to file it with the clerk on behalf of the *pro se* petitioner or appellant. See *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*). Here, appellant offers nothing to demonstrate that either the judge or clerk failed to take appropriate action with respect to the tender of his Rule 37.1 petition. The mere fact that the circuit judge may have received a copy of the petition within the sixty-day period does not constitute a showing that the clerk also received the petition but failed to file it.

As we said when the appeal was dismissed, the time limitations imposed in Ark. R. Crim. P. 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Benton, supra*. Appellant's petition was not timely filed and was thus subject to summary

dismissal.

Motion denied.